

Message Text

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TAGS: EFIS, PE

SUBJ: FISHERMEN'S PROTECTIVE ACT - PRESS GUIDANCE ON
NOTIFICATION PROCEDURES

REF: STATE 157984

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1. ON AUGUST 13, 1973 PERUVIAN AND ECUADOREAN GOVERNMENTS
WILL BE OFFICIALLY NOTIFIED THAT U.S. HAS MADE REIMBURSE-
MENTS IN ACCORDANCE WITH OCTOBER 1972 AMENDMENT OF
FISHERMEN'S PROTECTIVE ACT. NOTIFICATION PROCEDURES

CONTAINED REFTEL. USG WANTS TO HOLD PUBLICITY OF THIS MATTER TO AN ABSOLUTE MINIMUM AND, IF POSSIBLE, AVOID IT ALTOGETHER. IN ANY CASE, WE DO NOT RPT NOT INTEND PUBLICIZE NOTIFICATION. SHOULD THERE BE ECUADOREAN AND PERUVIAN PUBLIC REACTION TO NOTIFICATION, DEPARTMENT PREPARED COMMENT DRAWING ON FOLLOWING GUIDANCE PREPARED FOR DEPARTMENT PRESS SPOKESMAN. FURTHER, IN ORDER TO KEEP OUR POSITION AS CLEAR AS POSSIBLE AND AVOID POSSIBILITY OF CONFLICTING STORIES OR INTERPRETATIONS ARISING IN DIFFERENT CAPITALS, DEPARTMENT PREFERS ADDRESS SUCH REACTION SHOULD IT OCCUR. THEREFORE, FOLLOWING GUIDANCE FURNISHED ADDRESSEE POSTS PRIMARILY FOR YOUR INFORMATION AND FOR USE, IN AMBASSADOR'S OR CHARGE'S DISCRETION, TO CORRECT FACTUAL INACCURACIES IN LOCAL REPORTING.

2. BACKGROUND. FISHERMEN'S PROTECTIVE ACT (FPA) WAS FIRST ENACTED IN 1954 TO PROVIDE REIMBURSEMENT FOR FINES PAID BY US FISHERMEN TO SECURE RELEASE OF THEIR VESSELS WHEN SEIZED BY FOREIGN COUNTRIES ON BASIS OF RIGHTS OR CLAIMS IN TERRITORIAL WATERS OR HIGH SEAS WHICH ARE NOT RECOGNIZED BY UNITED STATES. FPA WAS AMENDED IN 1968 TO INCLUDE REIMBURSEMENT NOT ONLY FOR FINES BUT ALSO FOR FEES AND OTHER DIRECT CHARGES RELATED TO SEIZURE. GUARANTY PROGRAM WAS ALSO AUTHORIZED TO PROVIDE PAYMENTS FOR ADDITIONAL ECONOMIC COSTS AND LOSSES ARISING FROM SEIZURE AND DETENTION OF VESSELS. UNDER 1954 AND 1968 VERSIONS OF FPA, REIMBURSEMENTS WERE REQUESTED OF CONGRESS IN SEMI-ANNUAL SUPPLEMENTAL APPROPRIATIONS. OCCASIONALLY THIS RESULTED IN LENGTHY DELAYS IN REIMBURSEMENT. IN OCTOBER 1972 FPA WAS FURTHER AMENDED TO EXPEDITE THE PAYMENT OF SEIZURE CLAIMS. CONGRESS SOUGHT TO EXPEDITE PAYMENTS TO VESSEL OWNERS BY ESTABLISHING 3 MILLION DOLLAR FISHERMEN'S PROTECTIVE FUND WHICH COULD BE REPLENISHED BY DEDUCTING AMOUNTS REIMBURSED TO U.S. FISHERMEN FROM FOREIGN ASSISTANCE FUNDS PROGRAMMED FOR LIMITED OFFICIAL USE

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SEIZING COUNTRIES. UNDER LATEST (OCTOBER 1972) AMENDMENTS OF FPA, DEPARTMENT OF STATE IS REQUIRED TO NOTIFY SEIZING COUNTRIES WHEN REIMBURSEMENTS ARE MADE TO U.S. FISHERMEN FOR FEES, FINES AND OTHER DIRECT CHARGES PAID TO THOSE COUNTRIES TO OBTAIN RELEASE OF U.S. FLAG VESSELS AS WELL AS AMOUNTS PAID TO FISHERMEN UNDER GUARANTY PROGRAM. WE INTERPRET LEGISLATION AS PERMITTING SEIZING COUNTRY 120 DAYS FOLLOWING SUCH NOTIFICATION TO REIMBURSE U.S. GOVERNMENT FOR THESE AMOUNTS; IF SEIZING COUNTRY HAS NOT MADE SUCH REIMBURSEMENT TO U.S. GOVERNMENT WITHIN 120 DAYS OF NOTIFICATION, SECRETARY OF STATE MUST TRANSFER AN EQUIVALENT AMOUNT FROM FOREIGN ASSISTANCE FUNDS PROGRAMMED FOR

THAT COUNTRY UNLESS PRESIDENT DECIDES THAT IT IS IN U.S. NATIONAL INTEREST NOT RPT NOT TO MAKE SUCH A TRANSFER.

3. Q. ARE REPORTS TRUE THAT U.S. GOVERNMENT WILL DEDUCT MORE THAN 2 MILLION DOLLARS FROM FOREIGN ASSISTANCE FOR PERU AND ECUADOR TO PAY FINES OF U.S. FISHERMEN SEIZED BY THOSE COUNTRIES? SUGGESTED REPLY. IN ACCORDANCE WITH LATEST AMENDMENTS TO FPA, DEPARTMENT OF STATE NOTIFIED GOVERNMENTS OF PERU AND ECUADOR ON AUGUST 13 THAT TREASURY DEPARTMENT RECENTLY REIMBURSED U.S. FISHERMEN 703,080 DOLLARS FOR FINES, FEES AND OTHER DIRECT CHARGES RELATED TO 22 SEIZURES OF U.S. FISHING VESSELS BY PERU BETWEEN DECEMBER 12, 1972 AND JANUARY 24, 1973 AND 1,602,336 DOLLARS FOR FINES, AND OTHER DIRECT CHARGES RELATED TO 22 SEIZURES BY ECUADOR BETWEEN NOVEMBER 12, 1972 AND FEBRUARY 10, 1973. HOWEVER, SUCH NOTIFICATION DOES NOT RPT NOT MEAN THAT U.S. FOREIGN ASSISTANCE FOR THOSE COUNTRIES HAS BEEN REDUCED BY SUCH AN AMOUNT. THE LATEST AMENDMENT ALSO PROVIDES THAT IF SEIZING COUNTRY DOES NOT REIMBURSE AMOUNTS PAID TO U.S. FISHERMEN BY U.S. GOVERNMENT WITHIN 120 DAYS OF HAVING BEEN NOTIFIED THAT REIMBURSEMENTS HAVE BEEN MADE, SECRETARY OF STATE MUST TRANSFER TO FISHERMEN'S PROTECTIVE FUND AN EQUIVALENT AMOUNT FROM FOREIGN ASSISTANCE FUNDS PROGRAMMED FOR THAT COUNTRY UNLESS PRESIDENT DECIDES IT IS IN U.S. NATIONAL INTEREST NOT RPT NOT TO DO SO.

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4. Q. DOESN'T NOTIFICATION MEAN THAT UNLESS SEIZING COUNTRY REIMBURSES U.S. GOVERNMENT WITHIN 120 DAYS ITS ASSISTANCE FROM THE U.S. WILL BE REDUCED? SUGGESTED REPLY. NOTIFICATION IS REQUIRED BY STATUTE. IT DOES NOT RPT NOT MEAN THAT ASSISTANCE TO SEIZING COUNTRIES WILL BE REDUCED. EVEN IF SEIZING COUNTRY DOES NOT REIMBURSE U.S. GOVERNMENT WITHIN 120 DAYS OF NOTIFICATION THAT U.S. GOVERNMENT HAS REIMBURSED U.S. FISHERMEN, THE PRESIDENT CAN EXERCISE HIS DISCRETIONARY AUTHORITY NOT TO TRANSFER ASSISTANCE FUNDS AT ANY TIME WITHIN 120 DAYS FOLLOWING NOTIFICATION.

5. Q. DO WE EXPECT PERU AND ECUADOR TO REIMBURSE U.S. GOVERNMENT FOR ITS REIMBURSEMENT OF U.S. FISHERMEN? SUGGESTED REPLY. I DO NOT WISH TO SPECULATE ON WHAT OTHER GOVERNMENTS MIGHT OR MIGHT NOT DO.

6. Q. DOESN'T FPA REQUIRE SECRETARY OF STATE TO TRY TO COLLECT FROM SEIZING COUNTRIES AMOUNTS REIMBURSED TO U.S. FISHERMEN BY U.S. GOVERNMENT? SUGGESTED REPLY. LAW DIRECTS SECRETARY OF STATE TO "TAKE SUCH ACTION AS

HE DEEMS APPROPRIATE TO MAKE AND COLLECT CLAIMS"
AGAINST SEIZING COUNTRIES.

7. Q. HAS U.S. EVER BEFORE ASKED THESE COUNTRIES FOR REIMBURSEMENT? SUGGESTED REPLY. NOT IN RECENT YEARS.
Q. WHY NOT? SUGGESTED REPLY. UNDER 1968 LEGISLATION, SECRETARY OF STATE HAD AUTHORITY TO DECIDE WHETHER OR NOT TO MAKE CLAIMS. HOWEVER, HAVING PRESENTED CLAIM, AND IF NO PAYMENT MADE WITHIN 120 DAYS AFTER CLAIM PRESENTATION, A DEDUCT IN AN EQUIVALENT AMOUNT HAD TO BE MADE FROM FOREIGN ASSISTANCE FUNDS PROGRAMMED FOR SEIZING COUNTRY. IT WAS DEPARTMENT'S VIEW THAT PRESENTING A CLAIM THAT HAD TO BE PAID IN 120 DAYS CLEARLY SIGNALLED A FUTURE SANCTION THAT WOULD HAVE ENDED ANY HOPES U.S. HAD FOR A NEGOTIATED SOLUTION OF THE FISHERIES DISPUTE. IT WAS CLEAR THAT EXECUTIVE BRANCH, CONGRESS AND U.S. TUNA INDUSTRY WANTED A NEGOTIATED SOLUTION TO FISHERIES DISPUTE, NOT CONTINUATION OF SEIZURES, SO SECRETARY EXERCISED HIS DISCRETION LIMITED OFFICIAL USE
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AND DIDN'T PRESENT CLAIMS.

8. Q. BY MAKING THE NOTIFICATION USING PROCEDURES UNDER 1972 AMENDMENT ISN'T U.S. TELLING THESE COUNTRIES PAY UP OR ELSE? SUGGESTED REPLY. NO WE ARE NOT RPT NOT. THE FPA IN ITS PRESENT FORM CLEARLY DISTINGUISHES BETWEEN NOTIFICATION AND DEDUCTION. THE QUESTION OF A

TRANSFER OF FOREIGN ASSISTANCE FUNDS DOES NOT COME UP UNTIL 120 DAYS AFTER NOTIFICATION AND THE PRESIDENT HAS DISCRETIONARY AUTHORITY NOT TO TAKE THIS STEP.

9. Q. WON'T REACTIONS OF THESE COUNTRIES BE VERY NEGATIVE? SUGGESTED REPLY. WE WOULD HOPE NOT. THEY HAVE MADE THEIR STRONG VIEWS ON THIS LEGISLATION KNOWN TO US AND WE HAVE DISCUSSED ITS PROVISIONS WITH THEM. DISTINCTION BETWEEN NOTIFICATION AND DEDUCTION IS CLEAR. ALL WE HAVE DONE IS NOTIFY THEM THAT REIMBURSEMENTS HAVE TAKEN PLACE.

10. Q. IF PERU AND ECUADOR DO NOT MAKE REIMBURSEMENT FOR THE SUMS WHICH U.S. GOVERNMENT HAS PAID TO U.S. FISHERMEN, WILL U.S. DEDUCT THOSE SUMS FROM FOREIGN ASSISTANCE TO THOSE COUNTRIES? SUGGESTED REPLY. AS I SAID EARLIER, NOTIFICATION IS NOT RPT NOT DEDUCTION. PRESIDENT CAN USE HIS DISCRETION NOT TO DEDUCT FROM ASSISTANCE TO SEIZING COUNTRIES AT ANY TIME WITHIN 120 DAYS FOLLOWING NOTIFICATION. AT PRESENT TIME NO RPT NO DECISION HAS BEEN

<< END OF DOCUMENT >>

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